



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY
Attorney General

(617) 727-2200
www.ago.state.ma.us

TO: Interested Parties
FROM: James T. McKinlay, General Counsel, Office of the Attorney General
RE: Review and Approval Process for Legal Services Contracts
DATE: November 6, 2007

This memorandum describes the review and approval process for “legal services provided under contract with the governor or with an officer, department, agency, board or commission serving under the governor or within one of the executive offices headed by a secretary appointed by the governor,” G.L. c. 30, § 65 (d), and supersedes the Memorandum to Interested Parties issued on April 3, 2002 titled, “Review and Approval Process for Legal Services Contracts.”

Under G.L. c. 30, § 65 (a)(3), the Office of the Attorney General (AGO) has two responsibilities: (1) to review legal services contracts to determine that any attorney hired by a department, agency, board, or commission of the commonwealth subject to G.L. c. 30, § 65 (d), is a member in good standing of the Massachusetts or other state bar, and has no apparent conflict of interests; and (2) if the attorney is providing litigation services, to ensure that the attorney will appear in court on behalf of the commonwealth only after the attorney’s appointment as a special assistant attorney general.

When departments subject to G.L. c. 30, § 65 (d), are contracting for legal services (H09 and N03)^a the following instructions should be followed.

I. Applicable to All Contracts for Legal Services:

A. Send copies (not originals) of the following:

1. the completed “**Review Form for Attorneys Providing Legal Services**”;
2. the detailed “**Scope of Services**,” outlining the specific legal services (H09 and N03 object codes) that will be performed by the attorney or firm;
3. a copy/printout from the website of the Commonwealth of Massachusetts Board of Bar Overseers, showing for **each attorney** who will be assigned to perform services, or who are identified as “key personnel” under the Contract (see form for additional details), that such attorney is a member in good standing of the Massachusetts bar (in the case of an attorney who is a member of an out of state bar, a record of the other state bar indicating that such attorney is a member in good standing);

4. (a) [“Consultant Contractor Mandatory Submission Form,”](#) as required by G.L. c. 29, § 29A; G.L. c. 7A, § 6 (Additional Income Disclosure; Disclosure of Persons with Financial Interest; Key Personnel) completed by the Contractor with all required attachments, or (b) a statement of financial interest for Non-Executive Departments and a resume;

5. a statement disclosing each matter the attorney or, in the case of a firm, each and every attorney in the firm, has pending in which the Commonwealth or any agency, department, board, commission, or employee thereof is an adverse party. If there is no such matter, a statement that the attorney or firm has no matter pending in which the Commonwealth or any agency, department, board, commission, or employee thereof is an adverse party; and

6. a statement from the agency requesting outside legal services under the contract stating that the agency has reviewed and analyzed the legal services contract and the information provided in the above paragraph, and recommends that the AGO General Counsel determine that any attorney named in the legal services contract is a member in good standing of the Massachusetts Bar or an out of state bar and has no conflicts of interest (or, to the extent such conflicts of interest exist, they should be waived) because:

Please note that the attorney or firm providing legal services has a continuing obligation to notify the AGO of any apparent conflicts of interest that arise while the contract is in force.

DO NOT send the entire contract package to the AGO for review. Please send only the requested items (1)-(6).

Please note that the Review Form and attachments can be sent **at any time** during the contracting process, and Departments do not have to wait until the Contract is signed to send the documentation to the AGO for review. In fact, Departments are encouraged to submit the required documentation as early in the contracting process as possible to ensure that the start of services is not delayed. However, we are asking that you submit the form to the AGO/General Counsel’s Office at least two weeks before the legal work is scheduled to begin and we remind you that the form must be completed and submitted (with required attachments) to the AGO prior to the start of performance or change in performance for: (1) any new legal services contract; and (2) and for any significant amendment to the scope of services under an existing contract.

Please do not send originals. Any documents submitted to the AGO for review will not be returned to the Department.

Irrespective of contract execution dates or other contract approvals, legal services may not begin until the AGO review is completed, as indicated by the date of approval on the Review Form. The Commonwealth policy continues to be that the latest signature date of any component of the completed contract is the effective date for that contract.

B. Approvals: Departments subject to G.L. c. 30, § 65 (d), must obtain approval by the AGO to contract for legal services. (Departments are reminded also that they must obtain certification or other authorization from the Governor’s Legal Counsel. G.L. c. 30, § 65 (a)(1) or (c).)

Once the AGO approves the Review Form, the AGO will fax the Review Form with the AGO approval (without attachments) to the Department Contact Person at the fax number listed on the Form, unless otherwise requested by a Department. (The original Review Form is kept by the AGO.) Once the AGO review is completed, a Department must attach to the executed contract the faxed Review Form containing the AGO approval.

Please contact Jim McKinlay, General Counsel, Office of the Attorney General by telephone (617-727-2200, ext. 2497) or e mail (james.mckinlay@state.ma.us) if you have any questions regarding the process.

II. Additional Requirement Where Litigation Services are Contemplated (SAAG):

In addition to having in place an approved Contract for Legal Services, an attorney who is providing litigation services may appear in court on behalf of the commonwealth only after having been appointed as a special assistant attorney general (SAAG). *See* G.L. c. 30, § 65(a)(3), and G.L. c. 12, § 3. The SAAG Approval Form is completed by the AGO. A copy of the SAAG Approval Form may be obtained from the General Counsel's Office.

cc: Agency General Counsels
Michael J. Pineault, Deputy Chief Counsel, Office of the Governor

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H09 ATTORNEYS/LEGAL SERVICES – Individuals and firms who represent the state in legal matters. For construction project related legal services, see N03. All Commonwealth departments are required to obtain prior written review by the Office of the Attorney General (AGO) for any legal services performed for the department under a contract. The AGO review of legal services contracts is limited to determining that any attorney/firm hired by a department is a member of the Massachusetts Bar (or out of state bar) in good standing, has no apparent conflicts of interests, and if providing litigation services, will appear in court on behalf of the Commonwealth only after his/her appointment as a Special Assistant Attorney General (SAAG) by the AGO. The [Attorney General Review Form for Attorneys Providing Legal Services](#) form must be completed and mailed (with required attachments) to the AGO for any new legal services contract, and for any significant amendment to the scope of services under an existing contract, PRIOR to the start of performance or change in performance. See: [Attorney General Policy for Prior Review of Attorneys](#). Attorneys hired by Executive departments are also required to obtain prior approval of the Governor's Chief Legal Counsel prior to posting or hire. See CC Object class for contract employee legal services.

N03 ATTORNEYS/LEGAL SERVICES – Persons who represent the state in legal matters on construction projects, or who provide any legal services related to a construction project, even if project is paid under a separate object code. For non-construction related legal services, see H09. All Commonwealth departments are required to obtain prior written review by the Office of the Attorney General (AGO) for any legal services performed for the department under a contract. The AGO review of legal services contracts is limited to determining that any attorney/firm hired by a department is a member of the Massachusetts Bar (or out of state bar) in good standing, has no apparent conflicts of interests, and if providing litigation services, will appear in court on behalf of the Commonwealth only after his/her appointment as a Special Assistant Attorney General (SAAG) by the AGO. The [Attorney General Review Form for Attorneys Providing Legal Services](#) form must be completed and mailed (with required attachments) to the AGO for any new legal services contract, and for any significant amendment to the scope of services under an existing contract, PRIOR to the start of performance or change in performance. See: [Attorney General Policy for Prior Review of Attorneys](#). Attorneys hired by Executive departments are also required to obtain prior approval of the Governor's Chief Legal Counsel prior to posting or hire.